U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
	)	

REPLY COMMENT AND COMMENT ON THE INITIAL REGULATORY FLEXIBILITY ANALYSIS BY THE OFFICE OF ADVOCACY OF THE U.S. SMALL BUSINESS ADMINISTRATION ON THE JOINT BOARD'S RECOMMENDED DECISION

The Office of Advocacy of the United States Small Business Administration submits the following reply comments concerning the Recommended Decision released by the Joint Board on November 8, 1996 in the above-captioned proceeding. The proceeding comments also address certain aspects of the Initial Regulatory Flexibility Analysis issued December 2, 1996 by the Commission.[1]

The Office of Advocacy was established by Congress in 1976 to serve as a voice for small business within the federal government. Its statutory duties include serving as a

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focal point for concerns regarding the federal government's policies as they affect small business, representing the views of small business before other federal agencies, developing proposals for changes in federal agencies' policies and communicating its proposals to the agencies.[2]

I. Excluding Rural Small Businesses from Universal Service Support Will Result in Rates That Are Not "Reasonably Comparable"

The Office of Advocacy asserted in its comments that excluding rural small businesses from universal service support would result in rates and services that were not "reasonably comparable" as required by section 254(b)(3) of the 1996 Act. Other commenters echoed this central concern. For example, the comment by Evans Telephone Company, et.al. stated: "Such disparities between what rural customers pay for comparable services that are available without restriction in urban areas are flatly inconsistent with the 1996 Act's comparable service requirement."[3] The Western Alliance also raised this concern: "In sum, the Joint Board's second residential line proposal would place rural residents at a serious disadvantage vis-a-vis their urban and suburban counterparts with respect to their access to, and cost of, telecommunications and information services."[4]

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[1] 61 Fed. Reg. 63778, 63796-63805 (December 2, 1996).
[2] 15 U.S.C. § 634c(1)-(4).
[3] Comments of Evans Telephone Company, Humboldt Telephone Company, Kerman Telephone Co., Oregon-Idaho Utilities, Inc., Pinnacles Telephone Co., The Ponderosa Telephone Co., The Siskiyou Telephone Company, and the Volcano Telephone Company on the Joint Board Recommended Decision at 4-5 ("Evans Telephone Comments").
[4] Comments of the Western Alliance at 17.

Other commenters have underscored the inevitable violation of the 1996 Act's rate comparability requirement. The Western Alliance comments offered the following example: "one Western Alliance member that currently provides local service at a $19.95 monthly rate (without the federal subscriber line charge) for all primary and secondary residential lines estimates that it would have to triple its monthly rate for second residential lines – to $60.15 – if the Joint Board proposal is adopted." The Evans Telephone Company, et. al. comments also estimate the impact of the Joint Board's proposal: "If there is no universal service support for second lines or second residences in rural areas, however, the rural consumer could well be faced with a $15 to $20 local rate for a primary line but a $75 rate for a second line." This would constitute a 375% to a 500% rate increase on the second line.[5] Of course, urban consumers would be faced with no rate increases on second lines, yielding rates that can in no sense be considered "comparable".

The comments submitted by TDS Telecom and Century suggest that rates on second lines would not be substantially higher if universal service support were removed.[6] This assertion, however, is based on the assumption that telephone companies will only charge rural consumers the incremental cost of a second line. The simple truth is that no telephone company has ever based its rates on incremental cost. This is particularly true for rates for smaller customers, which are rarely offered the discounts typically offered to

[5] If anything, these examples indicate even higher rate increases than the increases estimated in the OPASTCO study cited by the Office of Advocacy in its comments.
[6] Comments of TDS Telecom and Century Telephone Enterprises, Inc. at 24-26.

larger corporations. The bottom line is that rural small business end users will never see the rates suggested by TDS Telecom and Century.

II. Rural Multi-Line Business Are Typically Small And Therefore Are Particularly Vulnerable To Substantial Rate Increases.

The Office of Advocacy is particularly concerned with the Joint Board's apparent misperception of rural multi-line businesses. There have been public statements by various parties referring to corporations such as Saturn or IBM as representative of rural multi-line businesses. While such corporations have increasingly located themselves in rural areas (largely because of advanced telecommunications capabilities at comparable costs), they are not typical of the rural multi-line business. The vast majority of rural multi-line businesses more closely resemble the classic small business. Many small rural businesses must have more than one line to accommodate fax machines, Internet access, credit card and check approval systems, and other uses. This will increasingly be the case as rural small businesses take advantage of the opportunities of the information age – a principal goal of the 1996 Act.

Several parties commented on the Joint Board's apparent misperception of rural multi-line businesses. For example, the Western Alliance stated: "In its misguided attempt to save a few dollars of universal service support, the Joint Board erroneously equates multiple-line businesses with large corporations. However, the facts are that most small businesses (even most one-person firms) are multiple-line businesses, and that most rural multiple-line businesses are small businesses."[7] The Evans Telephone Co., et. al. comments reinforce this rather common-sensical observation: "The two-line business is apparently assumed to be a multi-national conglomerate, when in reality it is more likely to be just mom and pop with a fax machine."[8]

III. The Joint Board's Proposal to Cut Universal Service Support for Rural Small Businesses Will Adversely Affect Rural Economies Generally.

The Office of Advocacy is concerned that the Joint Board lost sight of the impact its proposal to cut universal service support to rural small businesses will have on the overall health of rural economies in general. The Office of Advocacy stated:

> The impact of this exclusion will be enormous. Support payments totaling as much as $1 to $3 billion dollars could be cut from rural communities. Rates for multi-line rural small businesses would increase dramatically, discouraging economic development in rural areas. Usage of advanced telecommunications services would be stifled by higher rates, tending to further isolate rural America. [9]

Other parties have echoed a concern over this part of the Recommended Decision's impact on rural economies in their comments. Roseville Telephone Company commented: "Finally, in the highest cost areas, failure to provide support for multi-line business services could create a significant obstacle to rural economic development."[10] The Minnesota Independent Coalition stated: "Rate increases will, in turn, discourage the

[7] Comments of the Western Alliance at 22.
[8] Comments of Evans Telephone Company, et. al. at 7.
[9] Comments by the Office of Advocacy, U.S. Small Business Administration at iii.
[10] Comments of Roseville Telephone Company at 9.

use of multiple business lines (and thereby retard infrastructure development)..."[11] The California Small Business Association underscored the broader impact this proposal could have:

> Affordable second lines are essential to the development of home-based businesses, telecommuting, home-to-school connectivity, expanded Internet access for students and businesses. In short, they play an important social and economic role in high cost areas.[12]

The Western Alliance expressed the greatest concerns regarding the Joint Board's proposed cuts. It cited a study by the Aspen Institute analyzing the role telecommunications play in fostering rural development, specifically in offsetting the effects of the recessions of the early 1980's. It stated that "telecommunications infrastructure and telecommunications-intensive businesses were instrumental in stemming the rural depression, and that they comprise a key factor in the future economic development of rural areas."[13] The Western Alliance concluded with the following dark scenario: "If adopted, this proposal will destroy years of economic development and planning and efforts by states, counties and rural telephone companies, and send a disastrous message to information and service firms that they cannot receive comparable telecommunications services at comparable rates in rural America."[14] With regard to rural small businesses, which are and will continue to be the backbone of rural economies, the Office of Advocacy could not agree more with this bleak outlook.

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[11] Minnesota Independent Coalition comments at 25.
[12] Comments of the California Small Business Association at 10.
[13] Comments of the Western Alliance at 21.
[14] Id. at 22.

IV. The Joint Board's Regulatory Flexibility Analysis Was Untimely, Improperly Published, and Inadequate.

The Recommended Decision contained no regulatory flexibility analysis when it was released on November 8, 1996. The absence of such analysis was painfully apparent, if only given the lack of analysis of the Joint Board's decision to cut universal support to small businesses. Other parts of the Recommended Decision also clearly demonstrate that no regulatory flexibility analysis was conducted for most of the major decisions affecting small businesses. The fact that a $1 to $3 billion dollar cut could be proposed in such a policy and legal vacuum is plain evidence of the failure of the Joint Board to consider the impact of its decisions on small business.

An Initial Regulatory Flexibility Analysis (IRFA) was published by the Commission – notably not by the Joint Board – in the Federal Register on December 2, 1996. 61 Fed. Reg. 63,778, 63,796-63,805. Strangely, neither the Commission nor the Joint Board ever officially released any part of this analysis apart from publication in the Federal Register – an unprecedented failure to notify the public and particularly small businesses. No explanation has yet been offered for this failure to follow normal Commission procedure of releasing all documents to the public. This falls short of any reasonable understanding of the Joint Board's and Commission's obligation to conduct outreach efforts to small business according to section 609 of the Regulatory Flexibility Act. 5 U.S.C. § 609. All this underscores the Joint Board's failure to analyze the consequences of a key portion of its decision on a vast number of small businesses across the country and to give adequate opportunity to small businesses to respond to its decision.

Moreover, the *ex post facto* analysis conducted by the Commission is substantively deficient. It falls short precisely on the issue addressed in the Office of Advocacy's comments – the reduction and elimination of universal service support for rural small businesses. The IRFA conducts a distortion of facts of Orwellian magnitude. It states that the Joint Board's proposal to cut universal service support for rural small businesses was actually a benefit to small businesses. Of course, this would only be the case if the Joint Board had (1) prejudged the entire issue, (2) decided to eliminate all support for rural small businesses and, finally (3) relented and reduced the cut at the eleventh hour. What this completely ignores is that all rural small businesses are currently fully supported by the various universal service and other high-cost support mechanisms. It also fails to quantify in any way the impact this part of the Recommended Decision will have on rural small businesses or to add any further enlightenment as to the policy foundation for reducing and eliminating this substantial and long standing support mechanism for rural America. Ultimately, all this part of the IRFA accomplishes is to add an ironic and disingenuous twist to the already unfavorable proposals contained in the Recommended Decision.

The shortcoming of the IRFA do not end there. The IRFA then proceeds to acknowledge the potentially deleterious effect the Recommended Decision could have on many rural small businesses by stating that "the cost of service would be more likely to be prohibitive to small, single-connected businesses in high cost areas ... without universal support." Yet, if this is so, the IRFA fails to explain why the Recommended Decision would also propose ultimately to eliminate all support for single-connected businesses (¶ 92). Clearly somewhere in the Commission there is a dim, possibly even inadvertent awareness of the impact these proposed cuts would have on many small businesses. The Office of Advocacy strongly urges the Commission not to follow the Joint Board's proposal in this portion of the Recommended Decision and thoroughly analyze the impact its ultimate decision will have on millions of small businesses.

V. Conclusion

For the foregoing reasons, the Office of Advocacy recommends the Commission adopt rules consistent with the suggestions offered in this comment.

Respectfully submitted:

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